

PTO Form 1857 (Rev 9/2005)

OMB No. 0651-0050 (Exp. 04/2008)

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78764280
LAW OFFICE ASSIGNED	LAW OFFICE 106
MARK SECTION (no change)	
ARGUMENT(S)	
<p>Commissioner for Trademarks P.O. Box 1451 Alexandria , VA 22313-1451</p> <p style="text-align: center;">REQUEST FOR RECONSIDERATION</p> <p>In the Office Action dated January 9, 2007, the Examining Attorney maintains the refusal of registration on the basis of likelihood of confusion with U.S. Registration No. 1331784 for the mark ROSS VALVE in the name of Ross Valve Mfg. Co., Inc. ("Registrant") and the requirements regarding the identification of goods and services. For the following reasons, Applicant request the examining attorney to reconsider his position.</p> <p>The Examining Attorney takes into account the factors cited <u>In re E.I. DuPont de Nemours & Co.</u>, 177 USPQ 563 (CCPA 1973), namely, the two part likelihood of confusion analysis in which the marks are compared for similarities in appearance, connotation, and commercial impression, and second the goods and services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. For the reasons set forth below it is highly unlikely that confusion will occur.</p> <p>Applicant and Registrant have co-existed in the marketplace of over 85 years. Applicant began using the mark ROSS in 1921 and has co-existed with Registrant for those 85 years. Applicant and Registrant have worked together of many years cooperatively to erode any customer confusion that may have existed. In fact, no known instances of actual confusion have occurred since applicant commenced use of its core mark ROSS and in particular, since 1995 when applicant commenced use of the mark "ROSS CONTROLS." Furthermore, in an effort to alleviate any confusion, Applicant and Registrant have worked together to eliminate or minimize any such confusion to consumers in the marketplace, including placing cross references to each other on their respective websites. Attached as Exhibit A are examples of the cross references.</p> <p>Moreover, Registrant did not object to Applicant's prior active registration Nos. 1,195,003 for ROSS</p>	

or 2,025,126 for ROSS/FLEX; or inactive registration No. 2155944 for ROSS CONTROLS, which was inadvertently cancelled due to internal changes within Applicant. Attached as Exhibit B are a copies of certificates of registration.

In refusing registration, the Examining Attorney dissects and dismisses the "CONTROLS" element within Applicant's mark ROSS CONTROLS, as well as the "VALVE" element within Registrant's mark, ROSS VALVE. The terms CONTROLS and VALVE have been disclaimed in each mark and then concludes that the marks are likely to be confused by consumers based on the term ROSS. The technicality of a disclaimer in an application or registration has no legal effect on the issue of likelihood of confusion, since the public is unaware of what words have been disclaimed during prosecution. *See In re National Data Corporation*, 224 USPQ 749 (Fed Cir. 1985). If the marks are compared in their entireties the appearance, connotation, and sound do not lead to a likelihood of confusion.

Consumers seeking out Applicant's goods and services or Registrant's good or services will not be confused as the source of the goods or services because consumers seeking the products of either company are sophisticated and the channels of trade in which each company operates are different. Registrant sells valves that control municipal water flow and such valves are sold to municipal water authorities or civil engineering firms that repair water systems. Applicant sells valves to the steel, aluminum, press, safety, paint, and glass industries. Applicant does not sell goods or services through ordinary means. Applicant's goods/services have to be ordered directly through Applicant or through its distribution network. Applicant and Registrant serve different markets, namely Applicant sells to consumers who need a press or safety valve and Registrant sells water flow control valves. Applicant and Registrant do not attend any of the same trade shows nor advertise in the same publications.

Given that the consumers of the products are sophisticated and the channels of trader are very different it is highly unlikely that any confusion between the marks or products would results.

Moreover, a substantial factor weighing against the likelihood of confusion is the difference between the parties' goods and services. The cited ROSS VALVE registration covers "*Mechanical Water Supply Valves for Municipal and Industrial Potable Drinking Water*" and "*Water Supply and Control Valves for Municipal and Industrial Potable Drinking Water-Namely, Automatic Hydraulic Valves,*" whereas Applicant's goods and services were listed as "*Fluid control system for regulating the pressure and flow of fluid in industrial applications composed of fluid control valves, manifolds, couplings, conduits, cylinders, filters, lubricators, regulators, mufflers and pressure gauges, sold as a unit; components for regulating the pressure and flow of fluid in industrial applications, namely, fluid control valves, fluid control regulators and pressure gauges,*" as well as "*Engineering services relating to the specifying of, the selection of, the reporting on, and the design, engineering, production, risk assessment and reduction, control integrity, safety standards and installation supervision of fluid control systems and components, namely, fluid control valves, manifolds, couplings, conduits, cylinders, filters, lubricators, regulators, mufflers and pressure gauges.*"

Registrant's goods are limited to mechanical valves for potable water used in municipal and industrial potable water systems. Applicant's goods and services are specifically towards industrial pneumatic (air) systems and parts, not water systems, and not potable water systems in particular. A finding that each party manufactures valves for the purposes of a likelihood of confusion analysis is not supported by substantial evidence, since the mere fact that there are they are different types of valves has no relevance to whether a consumer would believe that the products emanate from the same source since the Applicant's valves are used in very different applications from Registrant's valve use. *See Shen Manufacturing Co. v. Ritz Hotel Ltd.*, 73 USPQ2d 1350 (Fed Cir. 2004). As stated above, Applicant's customers are more than sophisticated enough to seek and purchase pneumatic valves from Applicant, as opposed to purchasing potable water valves offered by Registrant. Moreover, it is highly unlikely

that a consumer would mistake a safety valve from the Applicant that prevents fingers from getting stamped off on a press with a water shut-off or drainage valve sold by Registrant. The products of the Applicant and Registrant are part of distinct sectors of a broad product category that are sufficiently unrelated. Consumers are not likely to assume they originate from the same source. *See Checkpoint Systems Inc. v. Check Point Software Technologies Inc.*, 60 USPQ2d 1609 (3rd Cir. 2001). It is inappropriate to presume the relatedness of the goods and services on the basis of the goods both being valves and since both parties activities are limited to different systems or applications.. *See M2Software Inc. v M2 Communications Inc.*, 78 USPQ2d 1944 (Fed Cir. 2006).

Identification of Goods & Services

Applicant requests the examining attorney to reconsider the request for amendment. The current goods and services are taken directly from a prior registration, namely registration No. 1195003 which were adopted after consulting with the examining attorney and previously accepted by the US PTO. Applicant is perplexed as to why goods previously adopted and accepted goods and services would not be accepted in a case that was simply re-filed.

Given that there have not been any actual known instance of confusion; that Registrant did not object to Applicant's prior registrations including No. 2,155,944 for ROSS CONTROLS that inadvertently lapsed; and that Registrant has not objected to the Applicant's use of the term ROSS or ROSS CONTROLS, Applicant respectfully request the examining attorney to reconsider his final refusal and pass the application to publication. Publication of the mark will also allow of any interested third party, including the Registrant if it so desires, to object to Applicant's use and registration of the mark.

Respectively Submitted

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	http://teasgate/PDF/ROA/2007/07/09/20070709170129040515-78764280-001_001/evi_69222245190-165312387_.exhibit_a__b_ross_controls_reconsideration.pdf
CONVERTED PDF FILE(S) (11 pages)	\\TICRS2\EXPORT13\787\642\78764280\xml1\ROA0002.JP G
	\\TICRS2\EXPORT13\787\642\78764280\xml1\ROA0003.JP G
	\\TICRS2\EXPORT13\787\642\78764280\xml1\ROA0004.JP G
	\\TICRS2\EXPORT13\787\642\78764280\xml1\ROA0005.JP G
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	\\TICRS2\EXPORT13\787\642\78764280\xml1\ROA0012.JP G
DESCRIPTION OF EVIDENCE FILE	Exhibits A & B - copies of TESS records and certificates of registration and website pages.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Jennifer Sheehan Anderson/
SIGNATORY'S NAME	Jennifer Sheehan Anderson
SIGNATORY'S POSITION	Attorney for Applicant
DATE SIGNED	07/09/2007
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Jul 09 17:01:29 EDT 2007
TEAS STAMP	USPTO/ROA-69.222.245.190- 20070709170129040515-7876 4280-370deba16cca74afd08c 6229d211978b5-N/A-N/A-200 70709165312387359

PTO Form 1957 (Rev 9/2005)

OMB No. 0651-0050 (Exp. 04/2009)

Response to Office Action**To the Commissioner for Trademarks:**Application serial no. **78764280** has been amended as follows:**Argument(s)**

In response to the substantive refusal(s), please note the following:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

REQUEST FOR RECONSIDERATION

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Moreover, Registrant did not object to Applicant's prior active registration Nos. 1,195,003 for ROSS or 2,025,126 for ROSS/FLEX; or inactive registration No. 2155944 for ROSS CONTROLS, which was inadvertently cancelled due to internal changes within Applicant. Attached as Exhibit B are a copies of certificates of registration.

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pass the application to publication. Publication of the mark will also allow of any interested third party, including the Registrant if it so desires, to object to Applicant's use and registration of the mark.

Respectively Submitted

Evidence

Evidence in the nature of Exhibits A & B - copies of TESS records and certificates of registration and website pages. has been attached.

Original PDF file:

http://teasgate/PDF/ROA/2007/07/09/20070709170129040515-78764280-001_001/evi_69222245190-165312387_-_exhibit_a__b_ross_controls_reconsideration.pdf

Converted PDF file(s) (11 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

Evidence-5

Evidence-6

Evidence-7

Evidence-8

Evidence-9

Evidence-10

Evidence-11

Response Signature

Signature: /Jennifer Sheehan Anderson/ Date: 07/09/2007

Signatory's Name: Jennifer Sheehan Anderson

Signatory's Position: Attorney for Applicant

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 78764280

Internet Transmission Date: Mon Jul 09 17:01:29 EDT 2007

TEAS Stamp: USPTO/ROA-69.222.245.190-200707091701290

40515-78764280-370deba16cca74afd08c6229d

211978b5-N/A-N/A-20070709165312387359

EXHIBIT A

Int. Cl.: 7

Prior U.S. Cl.: 23

United States Patent and Trademark Office

Reg. No. 1,195,003

Registered May 11, 1982

TRADEMARK
Principal Register

ROSS

Ross Operating Valve Company (Michigan
corporation)
120 E. Golden Gate Ave.
Detroit, Mich. 48203

For: INDUSTRIAL PNEUMATIC CONTROL
ELEMENTS FOR AIR SYSTEMS—NAMESLY,
CONDITIONING, DIRECTIONAL, ACCESSO-
RY, SOLENOID PILOT, SOLENOID DIRECT,
REMOTE AIR OPERATOR AND OTHER PNEU-
MATIC VALVES, in CLASS 7 (U.S. Cl. 23).

First use 1921; in commerce 1921.

Ser. No. 142,239, filed Sep. 22, 1977.

A. D. HOOKS, Primary Examiner



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TARR Status	ASSIGN Status	TDR	TTAB Status
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 (Use the "Back" button of the Internet Browser to return to TESS)**Typed Drawing**

Word Mark	ROSS
Goods and Services	IC 007. US 023. G & S: Industrial Pneumatic Control Elements for Air Systems-Namely, Conditioning, Directional, Accessory, Solenoid Pilot, Solenoid Direct, Remote Air Operator and Other Pneumatic Valves. FIRST USE: 19210000. FIRST USE IN COMMERCE: 19210000
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	73142239
Filing Date	September 22, 1977
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	January 20, 1981
Registration Number	1195003
Registration Date	May 11, 1982
Owner	(REGISTRANT) Ross Operating Valve Company CORPORATION MICHIGAN 1250 Stephenson Highway Troy MICHIGAN 48083
Attorney of Record	Michael A. Lisi and Jennifer Sheehan Anderson
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20020725.
Renewal	1ST RENEWAL 20020725

Live/Dead
Indicator

LIVE

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BROWSE DICTIONARY

SEARCH OGS

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Int. Cls.: 40 and 42

Prior U.S. Cls.: 100, 101, 103 and 106

United States Patent and Trademark Office

Corrected

Reg. No. 2,025,126

Registered Dec. 24, 1996

OG Date Sep. 23, 1997

**SERVICE MARK
PRINCIPAL REGISTER**

ROSS/FLEX

ROSS OPERATING VALVE COMPANY
(MICHIGAN CORPORATION), DBA
ROSS CONTROLS,
1250 KIRTS BOULEVARD
TROY, MI 48007

FOR: CUSTOM MANUFACTURE OF
PNEUMATIC VALVES, PNEUMATIC
CONTROL SYSTEMS AND COMPO-
NENTS THEREOF, IN CLASS 40 (U.S.
CLS. 100, 103 AND 106).

FIRST USE 4-19-1993; IN COMMERCE
5-0-1993.

FOR: ENGINEERING SERVICES AND
[CUTOM] * CUSTOM * DESIGN SERV-
ICES FOR OTHERS, IN THE FIELD OF
PNEUMATIC VALVES AND CONTROL
SYSTEMS, AND COMPONENTS THERE-
OF, IN CLASS 42 (U.S. CLS. 100 AND
101).

FIRST USE 4-19-1993; IN COMMERCE
5-0-1993.

SER. NO. 74-716,649, FILED 8-15-1995.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Sep. 23, 1997.*

COMMISSIONER OF PATENTS AND TRADEMARKS



United States Patent and Trademark Office

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TARR Status	ASSIGN Status	TDR	TTAB Status
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 (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	ROSS/FLEX
Goods and Services	IC 040. US 100 103 106. G & S: custom manufacture of pneumatic valves, pneumatic control systems and components thereof. FIRST USE: 19930419. FIRST USE IN COMMERCE: 19930500
	IC 042. US 100 101. G & S: engineering services and [cutom] * custom * design services for others, in the field of pneumatic valves and control systems, and components thereof. FIRST USE: 19930419. FIRST USE IN COMMERCE: 19930500
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	74716649
Filing Date	August 15, 1995
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	October 1, 1996
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	2025126
Registration Date	December 24, 1996
Owner	(REGISTRANT) Ross Operating Valve Company DBA Ross Controls CORPORATION MICHIGAN 1250 Stephenson Highway Troy MICHIGAN 48083
Attorney of	

Record Michael A. Lisi and Jennifer Sheehan Anderson
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20060915.
Renewal 1ST RENEWAL 20060915
Live/Dead Indicator LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
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Int. Cls.: 9 and 42

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100 and 101

Reg. No. 2,155,944

United States Patent and Trademark Office

Registered May 12, 1998

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

ROSS CONTROLS

**ROSS OPERATING VALVE COMPANY
(MICHIGAN CORPORATION), DBA ROSS
CONTROLS
1250 KIRTS BOULEVARD
TROY, MI 48007**

**FOR: PNEUMATIC CONTROL SYSTEMS
FOR REGULATING THE PRESSURE AND
FLOW OF COMPRESSED AIR IN INDUSTRIAL
APPLICATIONS COMPOSED OF PNEUMATIC
CONTROL VALVES, MANIFOLDS, COU-
PLINGS, CONDUITS, CYLINDERS, FILTERS,
LUBRICATORS, REGULATORS, MUFFLERS
AND PRESSURE GAUGES, SOLD AS A UNIT;
COMPONENTS FOR REGULATING THE PRES-
SURE AND FLOW OF COMPRESSED AIR IN
INDUSTRIAL APPLICATIONS, NAMELY,
PNEUMATIC CONTROL VALVES, AIR FLOW
REGULATORS AND PRESSURE GAGES, IN
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).**

**FIRST USE 1-0-1995; IN COMMERCE
1-0-1995.**

**FOR: ENGINEERING SERVICES RELATING
TO THE SPECIFYING OF, THE SELECTION
OF, THE REPORTING ON, AND THE DESIGN,
ENGINEERING, PRODUCTION, AND INSTAL-
LATION SUPERVISION OF THE PNEUMATIC
SYSTEMS AND COMPONENTS DESCRIBED
ABOVE, IN CLASS 42 (U.S. CLS. 100 AND 101).**

**FIRST USE 1-0-1995; IN COMMERCE
1-0-1995.**

OWNER OF U.S. REG. NO. 1,195,003.

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "CONTROLS", APART FROM
THE MARK AS SHOWN.**

SER. NO. 74-686,436, FILED 5-31-1995.

ANDREW BAXLEY, EXAMINING ATTORNEY

EXHIBIT B

Home

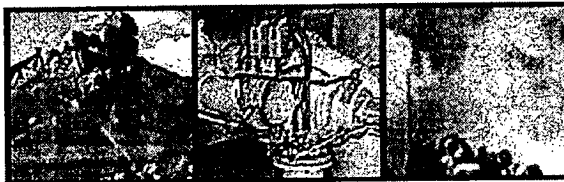
- What's New
- Customer Letters

Valves for Water Systems

Ask Ross Valve

- Service Inquiry
- Product Inquiry
- Send a Catalog

For over 120 years, Ross Valve has been committed to excellence in designing, manufacturing and servicing automatic control valves for water systems.



From irrigation to water works to fire control, Ross Valve can provide you with the products, service and support to meet the needs of any of your water systems' applications. View our [on-line catalog](#) or [contact us](#) to determine the best Ross Valve for your system.

The Ross Advantage

"Purchasing a control valve should be treated as a lifetime investment due to the long life of the product. Beware of the 'throw away' designs. Ross Valve offers many advantages to our customers in the way of knowledge and experience. When you purchase a valve from Ross Valve, you will have the peace of mind of knowing that our company will be there to serve you in the decades to come. This is the Ross Advantage — now and in the future."

Got Cavitation?

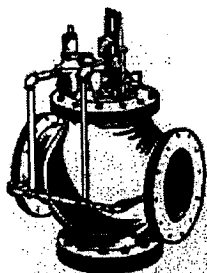


If your applications encounter cavitation, you know the symptoms: that loud screeching noise that lets you know something is wrong. And something is wrong, because cavitation isn't just a nuisance problem. Over time, it erodes the valve, destroying it from the inside out and necessitating a repair that involves downtime and significant expense.

Download the Ross Valve [WaterTamer brochure](#) or [contact us](#) to find out more about our anticavitation solutions.

Looking for Ross Controls ? (Pneumatic and Solenoid Valves)

Ross Valve Mfg. Co., Inc. is not related at all to Ross Controls of Troy, Michigan. To access their site click on the logo below.



Ross News

Spanish Web Site

Visit our Web Site in [Spanish](#)

Pre-Packaged Valve Vaults

Download the [Valve Vaults brochure](#).

Multi-Orifice Valve

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Frequently Asked Questions

Got a question about ROSS valves? Most likely the question has been asked before. There are some questions that we get asked quite often, so we have compiled a list of several common questions ... and the answers... and placed them here so you can browse through them. Click on one of the links below to see if your question has already been answered. If you still don't find what you are looking for, then please contact us.

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